



Department of Energy
Washington, DC 20585

Feb 27 2019

Mr. Russel Neiss
MuckRock
Dept. MR 30859
411 A Highland Avenue
Somerville, MA 02144

Via email: 30859-38994425@requests.muckrock.com

Re: HQ-2017-00287-F

Dear Mr. Neiss:

This is the further response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You requested:

Any communications sent between representatives of Trump for America, Inc. and the Department of Energy regarding the “Questions posed by President-elect Trump’s transition team to Energy Department officials.”

Your request was assigned to the Office of Management (MA). DOE released a partial response of the Questionnaire to you on June 23, 2017. This letter serves as the final response.

MA began its search on March 13, 2017, which is the cutoff date for responsive documents. MA has completed its search and has located an additional ninety-one (91) documents responsive to your request. The remaining documents are being provided to you as described in the accompanying index. MA identified portions of two (2) documents, Documents 22 and 89 that contain equities from DOE’s Office of Inspector General (OIG). On January 31, 2018, OIG provided you with a response to these documents.

Upon review, DOE has determined that certain information contained within the records should be withheld pursuant to Exemptions 3, 5, 6, 7(C), and 7(E) of the FOIA, 5 U.S.C. § 552(b)(3), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E).

Exemption 3 protects from disclosure information “specifically exempted from disclosure by statute (other than section 552(b) of this title), if that statute--(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld[.]” The National Security Act of 1947, 50 U.S.C. § 3001, et seq..., is one such statute that falls within the coverage of Exemption 3. *See CIA v. Sims*, 471 U.S. 159, 167 (1985) (“Section 102(d)(3) of the National Security Act of 1947, which calls for the Director of Central Intelligence to protect ‘intelligence sources and methods,’ clearly ‘refers to particular



types of matters,’ 5 U.S.C. § 552(b)(3)(B), and thus qualifies as a withholding statute under Exemption 3.”)

The Act permits the redactions of both sensitive unclassified information and classified information, such as intelligence methodology and intelligence and counterintelligence personnel involved in these activities. The information withheld under Exemption 3 is the name of an intelligence community employee, the disclosure of which could reveal the nature of intelligence activities.

Exemption 5 protects from mandatory disclosure “inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency....” Exemption 5 incorporates the deliberative process privilege which protects recommendations, advice, and opinions that are part of the process by which agency decisions and policies are formulated. The information withheld under Exemption 5 consists of inter-agency pre-decisional information.

A part of the document reflects deliberative discussions. The DOE may consider these preliminary views as part of the process that will lead to the agency’s final policy decision about these matters. The withheld information does not represent a final agency position, and its release would compromise the deliberative process by which the government makes its decisions. Thus, the information is being withheld under Exemption 5 of the FOIA as pre-decisional material that is part of the agency’s deliberative process.

Exemption 6 generally is referred to as the “personal privacy” exemption; it provides that the disclosure requirements of FOIA do not apply to “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). In applying Exemption 6, DOE considered: 1) whether a significant privacy interest would be invaded; 2) whether the release of the information would further the public interest by shedding light on the operations or activities of the Government; and 3) whether in balancing the privacy interests against the public interest, disclosure would constitute a clearly unwarranted invasion of privacy.

The information withheld under Exemption 6 information consists of mobile phone numbers, names of certain individuals, email addresses of certain individuals, personal information about an individual, and the names of security personnel. This information qualifies as “similar files” because it is information in which an individual has a privacy interest. Moreover, releasing the information could subject the individual to unwarranted or unsolicited communications. Since no public interest would be served by disclosing this information, and since there is a viable privacy interest that would be threatened by such disclosure, Exemption 6 authorizes withholding the information. Therefore, we have determined that the public interest in the information’s release does not outweigh the overriding privacy interests in keeping it confidential.

Exemption 7 protects from disclosure “records or information compiled for law enforcement purposes” that fall within the purview of one or more of six enumerated categories. To qualify under Exemption 7, the information must have been compiled, either originally or at some later

date, for a law enforcement purpose, which includes crime prevention and security measures, even if that is only one of the many purposes for compilation.

Exemption 7(C) provides that, “records of information compiled for law enforcement purposes” may be withheld from disclosure, but only to the extent that the production of such documents “could reasonably be expected to constitute an unwarranted invasion of personal privacy...” In applying Exemption 7(C), DOE considered whether a significant privacy interest would be invaded, whether the release of the information would further the public interest in shedding light on the operations or activities of the Government, and whether in balancing the privacy interests against the public interest, disclosure would constitute unwarranted invasion of privacy.

The names and other identifying information withheld identify security personnel. Those individuals have a significant privacy interest in their identities, which, if known, could pose a serious safety risk to them or those to whom they are providing protection, and may result in an unwarranted invasion of their privacy. Releasing their identities or contact information would reveal little about the operations or activities of the Government. Therefore, disclosure of this information could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Exemption 7(E) provides that, “records or information compiled for law enforcement purposes” may be withheld from disclosure, but only to the extent that the production of such documents “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.”

The information withheld under Exemption 7(E) consists of secured conference room numbers. That information was compiled for preventative law enforcement and/or security purposes to prevent future illegal acts in the form of cyber security intrusions. Because the redacted portions of the enclosed document contains information about DOE’s investigative techniques that could be used by an individual to obtain classified or sensitive information on DOE networks without authorization, we are withholding this information pursuant to Exemption 7(E).

This satisfies the standard set forth in the Attorney General’s March 19, 2009, memorandum that when a FOIA request is denied, agencies will be defended and justified in not releasing the material on a discretionary basis “if (1) the agency reasonably foresees that disclosure will harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law.” The Attorney General’s memorandum also provides that whenever full disclosure of a record is not possible, agencies “must consider whether they can make a partial disclosure.” Thus, we have determined that, in certain instances, a partial disclosure is proper. This also satisfies DOE’s regulations at 10 C.F.R. § 1004.1 to make records available which it is authorized to withhold under 5 U.S.C. § 552 when it determines that such disclosure is in the public interest. Accordingly, we will not disclose this information.

Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the determination to withhold the information described above. The FOIA requires that “any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the

portions which are exempt," 5 U.S.C. § 552 (b). As a result, a redacted version of the document is being released to you in accordance with 10 C.F.R. § 1004.7(b)(3).

This decision, as well as the adequacy of the search, may be appealed within 90 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. Appeals should be addressed to Director, Office of Hearings and Appeals, HG-1, L'Enfant Plaza, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585-1615. The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. You may also submit your appeal by e-mail to OHA.filings@hq.doe.gov, including the phrase "Freedom of Information Appeal" in the subject line. The appeal must contain all the elements required by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either (1) in the district where you reside, (2) where you have your principal place of business, (3) where DOE's records are situated, or (4) in the District of Columbia.

You may contact DOE's FOIA Public Liaison, Alexander Morris, FOIA Officer, Office of Public Information, at 202-586-5955, or by mail at MA-46/Forrestal Building 1000 Independence Avenue, S.W. Washington, D.C. 20585 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

The FOIA provides for the assessment of fees for the processing of requests. *See* 5 U.S.C. § 552(a)(4)(A)(i); *see also* 10 C.F.R. § 1004.9(a). In our December 26, 2016, letter you were informed that your request was placed in the "other" category for fee purposes. Requester in this category are entitled to two free hours of search time and are provided 100 pages at no cost. Because DOE's processing costs did not exceed \$15.00, the minimum amount at which DOE assesses fees, there will be no charge for processing your request.

If you have any questions about the processing of the request or this letter, you may contact Ms. Elizabeth Sullivan or me at:

MA-46/Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585
(202) 286-9141

I appreciate the opportunity to assist you with this matter.

Sincerely,



Alexander C. Morris
FOIA Officer
Office of Public Information

Enclosures

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Request #: HQ-2017-00287-F

Final response for request from Mr. Russel Neiss for:

Questions posed by President-elect Trump's transition team to Energy Department officials.

The Office of Management (MA) has identified an additional ninety-one (91) documents responsive to your request.

- Nine (9) documents *are being released in part pursuant to Exemption (b)(5)*. Exemption 5 information consists of information that is pre-decisional and/or deliberative in nature.
- Forty-two (42) documents *are being released in part pursuant to Exemption (b)(6)*. Exemption 6 information consists of mobile phone numbers, names of certain individuals, email addresses of certain individuals, personal information about an individual, and the names of security personnel.
 - The attachment to Document 22 originated with DOE's Office of the Inspector General (OIG) and has been transferred to OIG to review their equities.
- One (1) document *is being released in part pursuant to Exemptions (b)(3), (b)(6), and (b)(7)(E)*. Exemption 3 information consists of the name of an intelligence community employee. Exemption 6 information consists of names of certain individuals. Exemption 7E information consists of a secure conference room number.
- Thirteen (13) documents *are being released in part pursuant to Exemptions (b)(5) and (b)(6)*. Exemption 5 information consists of information that is pre-decisional and/or deliberative in nature. Exemption 6 information consists of mobile phone numbers, names of certain individuals, and email addresses of certain individuals.
- One (1) document *is being released in part pursuant to Exemptions (b)(6) and (b)(7)(C)*. Exemption 6 information consists of the names of security personnel. Exemption 7C information consists of the names and other identifying information of security personnel.
- Two (2) documents *are being released in part pursuant to Exemptions (b)(5), (b)(6), and (b)(7)(C)*. Exemption 5 information consists of information that is pre-decisional and/or deliberative in nature. Exemption 6 information consists of the names of security personnel, email addresses of certain individuals, and mobile phone numbers. Exemption 7C information consists of the names and other identifying information of security personnel.
- One (1) document *is being released in part pursuant to Exemptions (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E)*. Exemption 5 information consists of information that is pre-decisional and/or deliberative in nature. Exemption 6 information consists of

the names of security personnel, email addresses of certain individuals, and mobile phone numbers. Exemption 7C information consists of the names and other identifying information of security personnel. Exemption 7E information consists of a secure conference room number.

- Twenty-two (22) documents *are being released in their entirety*.
 - The attachment to Document 89 originated with DOE's Office of the Inspector General (OIG) and has been transferred to OIG to review their equities.